

CG EXH 50074

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

AT ALBUQUERQUE NM

MAR 31 2000

CHARLIE L. EDWARDS,

Plaintiff,

ROBERT M. MARCH
CLERK

v.

No. CIV-00-0045 BB/LFG

WACKENHUT CORRECTION CORPORATION,
NEW MEXICO DEPARTMENT OF CORRECTION,
(SECRETARY ROB PERRY), LEA COUNTY
CORRECTION CORPORATION (KENNETH BATSON,
COUNTY COMMISSIONER), AND GARY JOHNSON,
(GOVERNOR OF STATE), LOUISIANA/TEXAS CERT.
TEAM,

Defendants.

MEMORANDUM OPINION AND ORDER

This matter is before the Court *sua sponte* to review Plaintiff's civil rights complaint pursuant to 28 U.S.C. § 1915(e)(2), Fed.R.Civ.P. 12(b)(6), and 42 U.S.C. § 1997e(e). Plaintiff is incarcerated, appearing pro se, and has moved for leave to proceed in forma pauperis. For the reasons below, Plaintiff's complaint will be dismissed.

The Court has the discretion to dismiss an in forma pauperis complaint *sua sponte* under § 1915(e)(2) "at any time if the action...is frivolous or malicious; [or] fails to state a claim upon which relief may be granted." The Court may also dismiss a complaint *sua sponte* under Fed.R.Civ.P. 12(b)(6) for failure to state a claim if "it is 'patently obvious' that the plaintiff could not prevail on the facts alleged, and allowing him an opportunity to amend his complaint would be futile." *Hall v. Bellmon*, 935 F.2d 1106, 1109 (10th Cir. 1991) (quoting *McKinney v. Oklahoma Dep't of Human Services*, 925 F.2d 363, 365 (10th Cir. 1991)). In reviewing Plaintiff's pro se complaint, the Court applies the same legal standards applicable to pleadings drafted by counsel but is mindful that the complaint must be liberally construed. *Northington v. Jackson*, 973 F.2d 1518, 1520-21 (10th Cir.

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1992).

The complaint alleges that Plaintiff was subjected to a strip search and was required, “for no apparen reason,” to remain naked for twenty minutes in the presence of female officers as well as other inmates who were passing between assignments. As a result, Plaintiff suffered mental anguish and emotional distress. He seeks declaratory judgment that Defendants “are liable” and damages.

Plaintiff has asserted claims based on these same allegations in a prior complaint filed in this Court. *Edwards v. Wackenhut, et al.*, No. CIV 99-0747 JC/RLP. The prior complaint was dismissed with prejudice, and the instant complaint is precluded by the doctrine of res judicata, which bars claims that were, or could have been, raised in an earlier action. *Yapp v. Excel Corp.*, 186 F.3d 1222, 1226 n.4 (10th Cir. 1999); *Clark v. Haas Group, Inc.*, 953 F.2d 1235, 1239 (10th Cir. 1992). Plaintiff’s complaint will be dismissed.

IT IS THEREFORE ORDERED that Plaintiff’s complaint be DISMISSED, and an order of dismissal shall be entered in accordance with this opinion.


UNITED STATES DISTRICT JUDGE